



Remote Gambling: Industry Trends and Federal Policy

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Summary

Gambling, once widely outlawed, is now a regulated, taxed activity that is legal in some form—bingo, card games, slot machines, state-run lotteries, casinos—in all but two states. State governments have the main responsibility for overseeing gambling, but Congress historically has played a significant role in shaping the industry. Since passage of the Unlawful Internet Gambling Enforcement Act (UIGEA; P.L. 109-347) in 2006, congressional focus has moved to remote gambling. As used in this report, remote gambling refers to gambling that does not occur in a casino, a bingo hall, or a store selling lottery tickets. Remote gambling includes gambling over the Internet as well as gambling using devices that may communicate by other means, such as by telephone or direct satellite links.

UIGEA, while preventing payments to illegal gambling-related businesses, does not outlaw any form of remote gambling. It allows states and Indian tribes to offer remote gaming within their territory if certain conditions are met. A majority of states already allow remote betting on horse racing, and a number use the web for lottery promotions. A number of Indian tribes and gaming companies have created entities to develop remote gaming and seem likely to expand them rapidly if the legal issues are clarified.

While UIGEA did not outlaw remote gambling, it also did not clarify the scope of long-standing laws that the U.S. Department of Justice (DOJ) has used to prosecute Internet gambling, such as the Wire Act, 18 U.S.C. 1084. With wide-ranging implications, a recent DOJ interpretation of the Wire Act authorizes states to allow online gambling, except for sports betting. Currently, Delaware and Nevada are the only two states to permit some form of Internet gaming, but several others are debating legislation to legalize online poker or other games. The global market for Internet gaming is currently estimated at more than \$30 billion a year. If the United States passes federal online gambling legislation and all states opt in, H2 Gambling Capital, a consulting firm, predicts a national online gaming market of some \$20 billion five years after enactment.

Gambling companies hold divergent views on the desirability of allowing remote gambling. Some casino operators, particularly the larger ones, foresee new opportunities for profit. On the other hand, many operators of smaller casinos are concerned that remote gambling could draw customers away. Complicating matters, total gambling revenues are only now recovering from declines in 2009 and 2010, and many established casinos are struggling due to increased competition as more states legalize casino gambling.

Several lawmakers have introduced legislation to allow, regulate, and tax remote gaming, and House and Senate committees have held hearings and roundtable discussions on the issue. Those favoring expanded remote gaming cite potential federal revenue from taxes and registration fees, as well as the need for comprehensive national regulation. Opponents question whether it is possible to have stringent regulation of online gambling, which they say holds the potential for increased fraud and money laundering. Among other issues Congress faces are the proper balance of federal and state regulation and the possible social costs of expanded gaming, including problem gambling.

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Introduction

Gambling, once widely outlawed, is now a regulated, taxed activity that is legal in some form—bingo, card games, slot machines, state-run lotteries, casinos—in all but two states.¹ State governments have the main responsibility for overseeing gambling, but Congress historically has played a significant role in shaping the industry. Congressional actions include 1960s-era anti-racketeering laws, a 1988 statute setting policy for Indian gaming, and a 1992 law banning state involvement in sports betting.²

With potentially far-reaching consequences for remote gaming³ and the gambling industry, the U.S. Department of Justice (DOJ) recently announced a major shift in its view of Internet gambling. In December 2011, DOJ concluded that the federal Wire Act applies only to sports betting, a departure from its long-held assertion that all forms of Internet gambling, especially online poker, are illegal.⁴ One industry observer predicts that this change will cause “an explosion of poker, instant lotteries, and casino games on the Internet, run or licensed by the states.”⁵

This report looks at the rise of remote gaming and its potential implications for the broader gambling industry, including traditional and tribal gaming. Having developed into a significant U.S. industry, traditional gambling industries and casino hotels directly employed about 390,000 people and generated an estimated \$80 billion in revenue in 2011. The U.S. market for remote gaming could be worth more than \$20 billion if the United States enacts federal legislation and all states opt in, according to projections by H2 Gambling Capital, a consulting firm.⁶

Congress addressed Internet gambling in a 2006 law, the Unlawful Internet Gambling Enforcement Act (UIGEA; P.L. 109-347). The law, passed partly in response to the recommendations of a congressionally created commission,⁷ bars gambling-related businesses

¹ Lucy Dadayan and Robert B. Ward, *For the First Time A Smaller Jackpot: Trends in State Revenues from Gambling*, Nelson A. Rockefeller Institute of Government, September 21, 2009, http://www.rockinst.org/pdf/government_finance/2009-09-21-No_More_Jackpot.pdf. Gambling is not legal in Hawaii and Utah.

² CRS Report 97-619, *Internet Gambling: An Overview of Federal Criminal Law*, by Charles Doyle. Laws include the 1961 Wire Act, 18 U.S.C. 1084; the Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701, and the Professional and Amateur Sports Protection Act, 26 U.S.C. 3701.

³ Gaming is a synonym for gambling, or playing games of chance for money. Remote gaming refers to gambling done away from licensed locations on devices such as wireless tablet PCs, mobile phones, hand-held gaming consoles, and personal computers. These activities may or may not occur over the Internet.

⁴ The Department of Justice opinion stems from a 2009 request by Illinois and New York asking for clarification on whether Internet lottery ticket sales and out-of-state vendors violated the 1961 Wire Act. Memorandum Opinion for the Assistant Attorney General, Criminal Division, Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act, September 2011, <http://www.justice.gov/olc/2011/state-lotteries-opinion.pdf>.

⁵ Nelson Rose, “The U.S. Justice Department Opinion on Internet Gaming: What’s at Stake for Tribes[.] Prepared for the U.S. Senate Committee on Indian Affairs,” February 9, 2012, <http://www.gamblingandthelaw.com/articles/321-the-us-justice-department-opinion-on-internet-gaming-whats-at-stake-for-tribes-prepared-for-the-us-senate-committee-on-indian-affairs.html>.

⁶ H2 Gambling Capital Consultants, data furnished to CRS by e-mail, November 5, 2012.

⁷ National Gambling Impact Study Commission, *National Gambling Impact Study Commission Final Report, Chapter 5: Internet Gambling*, 1999, <http://govinfo.library.unt.edu/ngisc/reports/5.pdf>. Citing the potential for increased underage gambling and fraud, the commission recommended that the federal government “should prohibit, without allowing new exemptions or the expansion of existing federal exemptions to other jurisdictions, Internet gambling not already authorized within the United States or among parties in the United States and any foreign jurisdiction.”

from accepting checks, credit card charges, and other forms of payment for Internet gambling that is outlawed by state or federal statutes, and sets fines and penalties on banks and financial firms that process such payments. However, UIGEA does not outlaw any specific types of gambling over the Internet, and allows states and tribes to continue or initiate Internet gaming within their borders if they meet certain safeguards.⁸

Like many other industries, the gambling industry has been transformed by developments in computing and telecommunications. Remote gaming has become an increasingly important part of the global gambling industry, making use of smartphones, handheld mobile units, digital TV sets, and dedicated devices. In the United States, states and tribes are using these advances to strengthen their respective gambling industries. Whereas nine states have express remote gambling prohibitions, in the majority of states, bettors can now use the Internet, television hookups, or other remote technology to place bets on horse racing. Many states, including Minnesota, New Hampshire, New York, North Dakota, and Virginia, permit online lottery sales offering web-based subscriptions.⁹ In 2012, Illinois became the first state to sell individual lottery tickets online.¹⁰ Nevada and Delaware are the only two states that have approved some form of online gaming; other states are expected to follow.¹¹

Estimates indicate that Americans spend approximately \$4 billion to \$6 billion annually on Internet gambling, and about 1,700 international gambling websites currently take bets from players located in the United States.¹² Millions of Americans are said to visit poker websites each month, despite questions about the legality of online poker; the extent to which players' winnings are declared to federal and state tax authorities is also not clear.¹³ The advent of software that uses global positioning technology, Internet addresses, and other data to track the age and geographic position of gamblers can make it possible for states to offer legal, remote gaming within their borders.¹⁴ Regulations to implement UIGEA appear to have made it easier for state lotteries and other legal gaming operators to receive payment via credit cards and other electronic payments.¹⁵

However, while UIGEA included exceptions for intrastate online betting, it did not clarify the scope of older laws that DOJ has used to prosecute Internet gambling, such as the Wire Act. Several bills to address this situation were introduced in the 112th Congress. Issues before

⁸ CRS Report RS22749, *Unlawful Internet Gambling Enforcement Act (UIGEA) and Its Implementing Regulations*, by Brian T. Yeh and Charles Doyle.

⁹ Gambling Compliance, Market Barriers: U.S. Internet Gaming, 2010, p. 101.

¹⁰ Alexandra Berzon, "States Up the Online Ante," *Wall Street Journal*, April 15, 2012.

¹¹ National Conference of State Legislatures, *2012 Legislation Regarding Internet Gambling or Lotteries*, September 20, 2012, <http://www.ncsl.org/issues-research.aspx?tabs=951,63,490>.

¹² U.S. Congress, House Committee on Energy and Commerce, Subcommittee on Commerce, Manufacturing, and Trade, *Written Statement of Parry Aftab, Advisory Board Member of FairPlayUSA*, Hearing on Internet Gaming: Is There a Safe Bet?, 112th Cong., 1st sess., October 25, 2011, p. 5.

¹³ The first online poker room, PartyPoker, went live in 1998, followed by Poker Stars and Party Poker in 2001.

¹⁴ UIGEA allows online, intrastate gaming (or gaming that links tribal gaming establishments) so long as there are safeguards to verify the geographic location of gamers and to ensure that minors do not wager. Geolocation technology tracks a user's physical location through the IP address used to access the Internet, and it also evaluates Internet browser settings such as time zone and language. Most forms of geolocation technology are reported to be extremely accurate, with experts estimating accuracy rates of between 85% and 98% at the state level and over 99% at the national level. See Kevin F. King, *Geolocation and Federalism on the Internet: Cutting Internet Gambling's Gordian Knot*, *The Columbia Science and Technology Law Review*, 2010, <http://www.stlr.org/html/volume11/king.pdf>.

¹⁵ Nelson I. Rose, "The New UIGEA Regulations: Opportunities for Operators," *Gambling and the Law*, June 1, 2010, <http://www.gamblingandthelaw.com/articles/261-the-new-uigea-regulations-opportunities-for-operators.html>.

Congress include the adequacy of UIGEA to meet its stated goals of addressing “a growing cause of debt collection problems for insured depository institutions and the consumer credit industry” and creating “new mechanisms for enforcing gambling laws on the Internet”;¹⁶ the desirability of legislation to legalize and tax interstate remote gaming; and the value of a greater federal role in regulation.

The Rise of Remote Gaming

Remote gaming, which began to develop in the 1980s, has been growing rapidly. About 85 countries have legalized online gambling, but some of the biggest potential markets, including China, Japan, South Korea, and the United States, continue to prohibit many forms of gambling over the Internet.¹⁷ Currently, the computer servers and administrative offices of all online gambling sites are physically located off-shore to avoid U.S. laws and regulations.¹⁸ According to private estimates, annual gross global revenue from online, television, and mobile gambling is in the range of \$34.4 billion, representing an approximately 280% increase over 10 years (see **Figure 1**).¹⁹ Estimates also indicate Internet gaming revenue comprises around 10% of gross global gaming revenue as of 2012.²⁰ In the United States, Internet gambling in 2011 accounted for 4% of gross gambling revenue, according to the American Gaming Association.²¹

Congress has been concerned about Internet gambling since the late 1990s. The 1999 report by the National Gambling Impact Study Commission estimated that in 1998, 14.5 million gamblers spent \$651 million on hundreds of online gambling websites, here and abroad.²² Early on, sports betting was the predominant form of Internet gambling,²³ as electronic casino games and online poker were slower to develop. The commission expressed concern about underage gamblers and potential fraud, and recommended prohibiting additional Internet gaming.²⁴

¹⁶ UIGEA §5361, congressional findings and purpose.

¹⁷ Antigua and Barbuda offered the first Internet gaming sites in the mid-1990s. David Stewart, *Online Gambling Five Years after UIGEA*, American Gaming Association, May 18, 2011, p. 1. http://www.americangaming.org/files/aga/uploads/docs/final_online_gambling_white_paper_5-18-11.pdf.

¹⁸ An international trade dispute arose in the mid-2000s, when Antigua lodged a complaint against the United States with the World Trade Organization (WTO) because foreign casinos could not accept wagers from U.S. players. The WTO ruled in favor of Antigua, finding the United States had violated the General Agreement on Trade in Services (GATS) by restricting Internet gambling. Although the United States was asked to bring regulations in compliance with GATS, the ruling has not changed the federal stance against Internet gambling.

¹⁹ H2 Gambling Capital Consultants, data furnished to CRS by e-mail, November 5, 2012. Gross gambling revenue (GGR) is defined as the amount wagered minus the winnings return to players, and is considered the true measure of the economic value of gambling. GGR is the figure used to determine what an operation earns before taxes, salaries, and other expenses are paid.

²⁰ Spectrum Gaming Group, *Internet Gambling Developments in International Jurisdictions: Insights for Indian Nations*, October 4, 2010, p. 39, <http://www.indiangaming.org/info/alerts/Spectrum-Internet-Paper.pdf>.

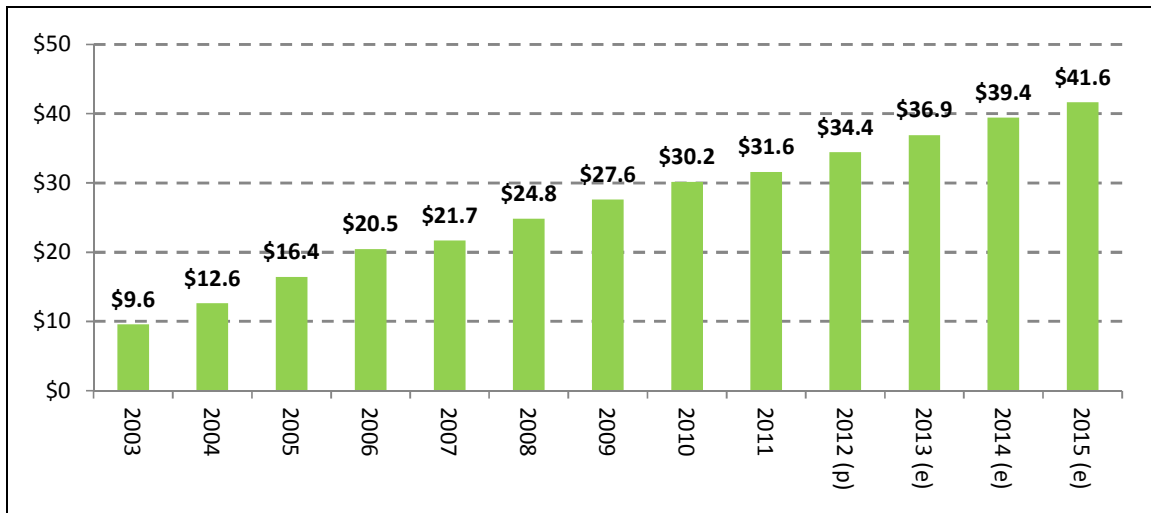
²¹ American Gaming Association, *State of the States*, The AGA Survey of Casino Entertainment, 2012, p. 28, <http://www.americangaming.org/files/aga/uploads/docs/sos/aga-sos-2011.pdf>.

²² *National Gambling Impact Study Commission Final Report*, Chapter 5. Internet Gambling, p. 5-1, <http://govinfo.library.unt.edu/ngisc/reports/5.pdf>.

²³ David O. Stewart, *An Analysis of Internet Gambling and its Policy Implications*, American Gaming Association, p. 3, http://www.americangaming.org/assets/files/studies/wpaper_internet_0531.pdf.

²⁴ *National Gambling Impact Study Commission Final Report*, Chapter 5. Internet Gambling, p. 5-12, <http://govinfo.library.unt.edu/ngisc/reports/5.pdf>.

Figure I. Global Internet Gross Gaming Revenues
Billions of Dollars



Source: H2 Gambling Capital, October 2012. These figures show revenues after payouts of winnings.

As online gaming grew, state attorneys general and the Department of Justice moved to shut down or halt payments to selected Internet sites. Federal officials acted under a series of 1960s statutes, including the Wire Act, which makes it a federal crime to use the telephone or telecommunications to conduct illegal gambling. In one of the best-known cases, Jay Cohen, a co-operator of the Antigua-based World Sports Exchange, was arrested in 1998 and charged with violating the Wire Act for advertising his company's services in the United States and accepting wagers from bettors in states where such gaming was illegal. Cohen was sentenced to 21 months in prison and fined \$5,000.²⁵ The U.S. Supreme Court declined to hear his appeal.

In 2003, DOJ warned media outlets that ran advertisements for gambling websites that they could be aiding illegal activities. Microsoft, Google, and Yahoo agreed in 2007 to pay a combined total of \$31.5 million to resolve DOJ claims that they were promoting illegal gambling by running advertisements for certain websites.²⁶

Congress addressed Internet gambling in UIGEA, barring gambling-related businesses from accepting checks, credit card charges, electronic transfers, and similar payments for Internet gambling that is outlawed by state or federal statutes. Violators are subject to criminal fines of up to \$250,000 (or \$500,000 if the defendant is an organization), imprisonment of up to five years, or both. After considerable delay, the Federal Reserve Board and the Department of the Treasury in late 2009 issued final rules to implement the law. Those rules took effect in June 2010.²⁷

²⁵ United States of America v. Jay Cohen, 260 F.3d 68 (2nd Cir., 2001).

²⁶ Elizabeth A. Ritvo and Samantha L. Gerlovin, *Legal Guide*, Massachusetts Broadcasters Association, September 2008, p. 77, <http://www.massbroadcasters.org/images/MBA%20Legal%20Guide%20%28FINAL%29%20-%20Updated%202008-09.PDF>.

²⁷ CRS Report RS22749, *Unlawful Internet Gambling Enforcement Act (UIGEA) and Its Implementing Regulations*, by Brian T. Yeh and Charles Doyle. The delay was due to concerns of financial firms and banks that proposed rules were too broad and would affect non-gambling payments, as well as to the complexity of both online payments and state and federal laws governing gambling. UIGEA's definition of "unlawful Internet gambling" does not specify what gambling activity is illegal; rather, the statute says legality is determined by underlying federal or state gambling laws. The (continued...)

There is evidence that UIGEA initially dampened the Internet gaming market. Shortly after the law was passed, some major gambling software companies announced that their products could no longer be used to provide gambling services to U.S. residents,²⁸ and publicly traded online gaming companies suffered losses in overseas stock markets due to concerns about the impact of the legislation and the loss of U.S. clients.²⁹ London-based consulting firm H2 Gambling Capital Consultants (H2G) estimated that U.S. wagering on international Internet sites, \$6 billion in 2006, declined to \$4 billion in 2007 after passage of UIGEA. The firm said that the global “eGaming” business began to rebound in 2010 and continued to grow until April 2011, when the Department of Justice indicted several leading Internet poker operators.

On what online poker players have dubbed “Black Friday,” the U.S. Attorney for the Southern District of New York on April 15, 2011, indicted the founders of three major Internet poker websites—PokerStars, Full Tilt Poker, and Absolute Poker/Ultimate Bet—for allegedly using phony corporations and websites to disguise illegal payments to their operations.³⁰ DOJ charged that the companies, which were located overseas but took bets from U.S. players, violated UIGEA, the Wire Act, and other federal laws. In September 2011 DOJ filed a civil suit against Full Tilt Poker for allegedly defrauding bettors.³¹ Prior to the April indictment, Full Tilt Poker and PokerStars had an estimated 60% of the global Internet poker market. While U.S. bettors no longer have access to those sites, an estimated 300 offshore gambling operators continue to offer services in the United States through websites, according to estimates for the U.S. gaming industry.³² On July 31, 2012, all civil complaints against PokerStars and Full Tilt Poker were dismissed following agreements with DOJ, payments of \$731 million to settle the claims, and the purchase of Full Tilt by PokerStars.³³ Fulltiltpoker.com reopened in Europe, but Americans cannot access the Full Tilt website.³⁴

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Federal Reserve and the Department of the Treasury, in final regulations to implement UIGEA, said they considered making a list of Internet gambling activities outlawed by state and federal law, but chose not to on the grounds that “Creating such a list would require the Agencies to formally interpret those laws that are written and enforced by other entities, such as State legislatures and law enforcement agencies. Accordingly, interpretations by the Agencies in these areas may not be determinative in defining the Act’s legal coverage and could set up conflicts or confusion with interpretations by the entities that actually enforce those laws.” (Federal Reserve System 12 CFR Part 233, Regulation GG; Docket No. R-1298.) The House Financial Services Committee report on H.R. 2267 (H.Rept. 111-656, Part I) notes that the UIGEA regulations “like the underlying legislation, fail to define the term unlawful Internet gambling, leaving it to each financial institution to reconcile conflicting state and federal laws, court decisions and inconsistent Department of Justice interpretations, when determining whether to process a transaction. Furthermore, some of the information needed to make this determination would generally be unavailable to banks because customers or financial institutions in foreign jurisdictions will likely be unwilling or unable to provide it.”

²⁸ Robert J. Williams, coordinator, Alberta Gaming Research Institute, University of Lethbridge, *Internet Gambling: A Comprehensive Review and Synthesis of the Literature*, August 31, 2007, <http://www.uleth.ca/dspace/bitstream/10133/432/1/2007-InternetReview-OPGRC.pdf>.

²⁹ Ian Swanson, “Internet Gambling Ban Stung Foreign Bookies,” *The Hill*, June 11, 2008.

³⁰ U.S. Department of Justice, “Manhattan U.S. Attorney Charges Principals of Three Largest Internet Poker Companies with Bank Fraud, Illegal Gambling Offenses and Laundering Billions in Illegal Gambling Proceeds,” April 15, 2011, <http://www.justice.gov/usao/nys/pressreleases/April11/scheinbergetalindictmentpr.pdf>. Indictment is available at <http://www.scribd.com/doc/53107543/Indictment-DOJ-vs-Scheinberg-Bitar-Tom-et-al>.

³¹ Alexandra Berzon, “U.S. Alleges Poker Site Stacked Deck,” *Wall Street Journal*, September 21, 2011.

³² David O. Stewart, Ropes & Gray, for the American Gaming Association, *Online Gaming Five Years After UIGEA*, May 2011, p. 8, http://www.americangaming.org/files/aga/uploads/docs/final_online_gambling_white_paper_5-18-11.pdf.

³³ The United States Attorney’s Office Southern District of New York, “Manhattan U.S. Attorney Announces \$731 Million Settlement Of Money Laundering And Forfeiture Complaint With Pokerstars And Full Tilt Poker,” press (continued...)

Another change affecting remote gaming is DOJ's recent determination on the Wire Act.³⁵ In its clarification made public in December 2011, the department isolated the Wire Act to be applicable only to sport-related gambling activities. According to legal gambling experts, this clarification eliminated nearly all federal anti-gaming laws. Furthermore, it appears that its stance not only opens the door to intrastate Internet activity, but possible interstate activity as well.

Even though legal questions remain, there are a number of indications that companies and states are poised to expand remote gaming as part of a larger trend toward online entertainment and communications. According to the Pew Internet & American Life Project, 85% of all adults now use the Internet and the same percentage have a cell phone, two-thirds of U.S. households have access to a high-speed broadband connection, 45% have a smartphone, and 18% have a tablet computer. All of these platforms could be used for gambling.³⁶ Soon, interactive television is expected to become widely available, offering even more potential platforms for betting. Nelson I. Rose, a professor at the Whittier Law School, argues that UIGEA and the regulations to implement it may have paved the way for expansion of remote gaming:

By issuing these [regulations] federal agencies have now made it clear that some forms of gambling on the Internet are legal in the United States. This creates opportunities for existing or expanding legal state gaming, and for bolstering faltering state budgets. But, mostly it opens some doors for creative Internet gaming operators ... The result will be a major expansion of Internet gambling. The major obstacles facing legal online gaming are the customers' fear that they might be breaking the law and their difficulty in getting money to sites they trust. Individual patrons will now be able to use their credit cards to make bets. And they will know that they are not breaking the law and the gaming operation is honest when the gambling site is operated by a state lottery or licensed by a state racing or gaming board, or has a reasoned legal opinion.³⁷

Many participants in the existing gambling industry, from Indian tribes to state lottery commissions to casino operators, have been exploring ways to increase their involvement in remote gaming. Companies not involved in the traditional gaming industry are also interested. Social networking sites such as Facebook provide online venues to play online bingo for cash prizes.³⁸ Another form of gaming is Internet sweepstakes cafes: consumers buy phone cards that, as a bonus, include sweepstakes entries and then use the cards to play games that resemble slot machines.³⁹ Wall Street brokerage firm Cantor Fitzgerald has developed a mobile device that can

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release, July 31, 2012, <http://www.justice.gov/usao/nys/pressreleases/July12/pokersettlement.html>.

³⁴ PRNewswire, "Shuffle Up and Deal! Full Tilt Poker Opens for Real Money Online Poker," press release, November 6, 2012, <http://www.marketwatch.com/story/shuffle-up-and-deal-full-tilt-poker-opens-for-real-money-online-poker-2012-11-06>.

³⁵ Memorandum Opinion for the Assistant Attorney General, Criminal Division, Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act, September 2011, <http://www.justice.gov/olc/2011/state-lotteries-opinion.pdf>.

³⁶ Pew Internet & American Life Project, *Trend Data (Adults)*, August 2012 Survey, <http://pewinternet.org/Trend-Data-%28Adults%29/Whos-Online.aspx>.

³⁷ Nelson I. Rose, "The New UIGEA Regulations: Opportunities for Operators," *Gambling and the Law*, June 1, 2010, <http://www.gamblingandthelaw.com/articles/261-the-new-uigea-regulations-opportunities-for-operators.html>.

³⁸ Christopher Thompson, "Facebook Ventures into Online Gambling," *Financial Times*, August 7, 2012.

³⁹ David O. Stewart, *Internet Sweepstakes Cafes: Unregulated Storefront Gambling in the Neighborhood*, American Gaming Association, October 2012, http://www.americangaming.org/files/aga/uploads/docs/whitepapers/internet_sweepstakes_white_paper_103112.pdf.

be used for sports betting inside Las Vegas casinos, allowing consumers to wager during a live game on such things as the outcome of a field goal kick or an at-bat.⁴⁰ The Nevada Gaming Control Board has approved the use of mobile devices, including Blackberry, Android, and iPad/iPhone applications, to enable people to bet on sports within the state.⁴¹ Zynga, a social gaming company, in partnership with bwin.party, announced plans to develop real-money mobile and online poker and casino games like blackjack, slots, and roulette in the United Kingdom, where such things are legal.⁴²

Because of concern about the legality of some remote gaming activities in the United States, U.S. companies are looking to certain foreign markets where Internet gaming is legal. Many of the top Internet gambling sites are licensed in the European Union (EU), especially in the United Kingdom, Gibraltar, Malta, Ireland, and Austria.⁴³ While noting the dearth of accurate data, a 2009 EU report called the sector “economically significant,” estimating that it employed more than 10,000 people. Betfair, a major online gambling firm, is listed on the London Stock Exchange.

Regulation of Remote Gaming

One major question about UIGEA and other recent legislative initiatives is whether it is possible to construct an effective system to regulate gaming that occurs outside identified physical locations. Enforcement of remote gaming laws presents logistical difficulties, including monitoring myriad websites to make sure that minors do not gamble; verifying the geographic location of gamblers on sites that are limited to certain states or territories; and auditing websites and payment systems. Consumers may experience difficulty resolving disputes with online operators whose physical location may be in countries with weak law enforcement or extreme banking secrecy.

Final federal rules to implement UIGEA required financial firms to engage in due diligence to ensure that businesses engaged in Internet gambling furnish proof of legal authority to operate the business and that state or tribal gambling ordinances include requirements verifying the age and geographic location of clients.⁴⁴ Nonetheless, the Department of Justice, the Department of State and state attorneys general have raised questions about the potential for fraud and money laundering on Internet gambling sites. In a November 2009 letter to Representative Spencer Bachus, Shawn Henry, assistant director of the FBI Cyber Division, cautioned that Internet poker could be used to “transfer ill-gotten gains” via the creation of private tournaments on online poker programs. He cast doubt on the ability of the gaming industry to accurately verify the age of gamblers or their geographic location and noted that Internet addresses could be manipulated to provide misleading information about location.⁴⁵

⁴⁰ Susanne Craig, “Taking Risks, Making Odds,” *New York Times*, December 24, 2010, <http://dealbook.nytimes.com/2010/12/24/taking-risks-making-odds>.

⁴¹ Julian Rogers, “William Hill Goes Mobile in Nevada,” *iGamingBusiness North America*, October 2012.

⁴² Tom Taulli, “Good News From Zynga? Finally!,” *InvestorPlace*, October 24, 2012.

⁴³ European Union Staff Working Paper, *Report to the Trade Barriers Regulation Committee*, June, 2009, p. 7, http://trade.ec.europa.eu/doclib/docs/2009/june/tradoc_143405.pdf.

⁴⁴ American Bankers Association, “UIGEA Final Rule, Frequently Asked Questions, Fact Sheet,” <http://www.aba.com/NR/rdonlyres/62A8C8BC-70E9-4D97-9568-53540F3045B5/57544/UIGEAFAQs.pdf>.

⁴⁵ Rep. Spencer Bachus, “Enforce Ban on Illegal Internet Gambling Congressman Bachus Says,” Press Release (continued...)

Soon after regulations to implement UIGEA took effect in June 2010, DOJ announced several high-profile settlements with online gambling operations. In September 2010, it entered into a non-prosecution agreement with British-based Sportingbet PLC, which operates betting websites in 21 countries. As part of the settlement, Sportingbet agreed to pay \$33 million and publicly admit that it created payment methods designed to hide its customers' transactions from U.S. credit card firms, which did not allow their cards to be used for Internet gambling.⁴⁶

The Oregon Racing Commission has addressed some of the regulatory issues in its procedures for licensing firms that provide Advanced Deposit Wagering (ADW) on horse races. Under ADW, consumers set up accounts with companies such as Twinspires (owned by the Churchill Downs racetrack), You Bet, or TV Games Network (TGV).⁴⁷ They then use the account to place bets on races over the phone, through the Internet, or with mobile device applications and set-top remote control devices linked to TGV channels that broadcast horse racing. Some ADW firms ran into difficulties after final regulations to implement UIGEA took effect, as several credit card issuers blocked payment to the companies out of concern that they might be linked to illegal gambling operations. Oregon now requires such firms to be licensed and audited by the commission, whether or not they are physically headquartered in the state.⁴⁸ ADW firms must provide:

- financial information including resources and detailed projections of revenue, expenditures, and cash flows by month;
- a list of all personnel;
- a segregated account with a federally insured bank to hold the funds of its account holders;
- a \$50,000 security fee; and
- proof of “an operational presence within the State of Oregon,” such as a call center or a subcontract with an existing call center.

The Remote Gambling Association (RGA), a trade association of licensed gambling operators in Europe, has worked with regulators to develop industry standards. In July 2010 the RGA issued anti-money laundering guidelines for the Internet casino industry, designed to supplement laws and regulations.⁴⁹ The guidelines recommend third-party verification of data, including use of software or approved third parties for “face to face” verification of customer documents; validating a customer’s address; and ensuring that transactions are carried out through recognized credit institutions. In August 2012, RGA published model technical guidelines for the online gambling industry, including responsibilities for credit card payments.⁵⁰

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containing link to FBI letter, December 3, 2009, http://bachus.house.gov/index.php?option=com_content&view=article&id=912:enforce-ban-on-illegal-internet-gambling-congressman-bachus-says&catid=40:2009-press-releases&Itemid=132.

⁴⁶ Sportingbet, “Non-prosecution agreement concluded with U.S. authorities,” Press Release, September 21, 2010, <http://www.sportingbetplc.com/21Sep2010nonprosecution.aspx>.

⁴⁷ GamblingCompliance, *Market Barriers: US Internet Gaming*, 2010, p. 125.

⁴⁸ Oregon Racing Commission, http://arcweb.sos.state.or.us/rules/OARS_400/OAR_462/462_220.html.

⁴⁹ Remote Gambling Association, “Anti-Money Laundering: Good Practice Guidelines for the Online Gambling Industry,” July 14, 2010, http://www.rga.eu.com/data/files/rga_aml_guidance_2010.pdf.

⁵⁰ Remote Gambling Association, *Technical Issues: Good Practice Guidelines for the Remote Gambling Industry*, August 31, 2012, http://www.rga.eu.com/data/files/rga_technical_guidelines.pdf.

A Short History of Legal U.S. Gambling and Lotteries

Government-supported gambling has been part of America's development since the earliest days, starting with a 1612 London lottery to raise money for the Virginia Colony.⁵¹ While gambling restrictions were imposed in some of the early colonies, the Continental Congress used lotteries to raise funds for forces during the Revolutionary War. Lotteries were used to finance public works projects and establish universities, including Harvard, Yale, Columbia, Dartmouth, and Princeton.⁵² By 1832, there were more than 400 lotteries in eight states.⁵³ Annual ticket sales came to 3% of national income and were several times larger than the federal budget.⁵⁴

Public opinion began to sour due to high-profile scandals and graft in lotteries, and by the time of the Civil War legal lotteries basically had been halted.⁵⁵ Some gambling and gamblers moved west with the Gold Rush. During Reconstruction, Louisiana created a special lottery to help rebuild the state, drawing players from around the nation. The Louisiana Lottery continued for years, despite evidence of mismanagement and theft. Congress intervened, passing legislation in 1876 banning the use of mail for lottery advertising. Congress approved a second bill in 1890 to ban the use of mail to sell lottery tickets, and in 1895 banned the transport of lottery tickets in interstate commerce.

By 1910, U.S. legal gambling, with the exception of horse racing, was moribund. State-sanctioned gaming began a comeback during the Great Depression as a means to raise money for charity and government services. States began to legalize bingo games in the 1930s, and Nevada legalized casino gambling in 1931.

Illegal gambling also proliferated, leading Congress in 1950 to investigate organized crime and gambling casinos. In 1951 lawmakers passed the Johnson Act, which barred transport of gambling machines in interstate commerce unless they were being moved to a legal jurisdiction. A second round of congressional investigations (from 1955 to 1960) resulted in a series of laws to combat gambling and racketeering.

In 1964, New Hampshire became the first state to reinstate a lottery. In 1976, New Jersey voted to allow casinos in Atlantic City. In 1979, Indian gambling began on the Seminole reservation in Florida.⁵⁶ In 1987, the Supreme Court upheld the right of Indian tribes to offer unregulated gambling on sovereign lands, so long as they did not violate state criminal laws. In response, Congress in 1988 passed the Indian Gaming Regulatory Act (IGRA) providing for Indian gambling to be regulated under compacts negotiated between state governments and tribes. In 1992, Congress passed the Professional and Amateur Sports Protection Act (PASPA) limiting states' ability to offer sports gambling. After viewing the success of Indian gaming, states began approving non-Indian casinos, riverboat gambling, and racinos, which are racetracks with other forms of gambling such as video slot machines. By 1994, casinos were authorized or operating in 23 states, and Tunica County, Mississippi, with an expansion of riverboat gambling, had moved from one of the poorest counties in the country to one of the fastest-growing.⁵⁷ More recent developments include the increase in online lottery sales in several states and approval of online gaming in Nevada and Delaware. Nine states have explicitly outlawed online gambling.

The European Parliament, in a 2008 report on online gambling, said it found "limited hard evidence of gambling operators defrauding consumers." The fraud it had seen included sites collecting money and then shutting down; refusing to pay; selling gamblers' personal details to other websites; and installing viruses on users' computers.⁵⁸

⁵¹ Many of the dates in this section come from the Chronology of Gambling Events in: William N. Thompson, *Gambling in America: An Encyclopedia of History, Issues and Society* (Santa Barbara, CA: ABC-CLIO, 2001).

⁵² Roger Dunstan, California Research Bureau, *Gambling in California*, CRB-97-003, January 1997, <http://www.library.ca.gov/crb/97/03/crb97003.html#toc>.

⁵³ Rex M. Rogers, *Gambling: Don't Bet on It*, (Grand Rapids, MI: Kregel Publications, 2005), p. 31.

⁵⁴ William N. Thompson, *Gambling in America: An Encyclopedia of History, Issues and Society*, p. 227.

⁵⁵ Roger Dunstan, California Research Bureau, *Gambling in California*, CRB-97-003, January 1997, <http://www.library.ca.gov/crb/97/03/crb97003.html#http>.

⁵⁶ 500 Nations, "Brief History of Indian Casinos," http://500nations.com/news/Indian_Casinos/history.asp.

⁵⁷ Adam M. Zaretsky, "Laissez le Bon Temps Roulette: Letting the Good Times Roll on Riverboat Casinos," *The Regional Economist*, Federal Reserve Bank of St. Louis, July 1994.

⁵⁸ European Parliament, Policy Department, Economic and Scientific Policy, *Online Gambling: Focusing on Integrity* (continued...)

The Competitive Impact of Remote Gaming

Many traditional forms of gambling could be affected by the legalization of additional remote gaming. The existing industry, which includes horse racing, card rooms, lotteries, charitable games, and casino gaming, consists of approximately 500 commercial casinos, about 400 Indian casinos and bingo halls, and lotteries in about 40 states. According to one private estimate, gross revenue for the nation's domestic gambling industries totaled about \$80 billion in 2011, not including revenue from casino-related hotel operations. Of this, commercial casinos are estimated to have taken in \$35 billion, Indian casinos \$25 billion, and state lotteries \$20 billion.⁵⁹

Taken together, gambling industries and casino hotels employed almost 390,000 people nationwide in 2011. Of these, 126,300 worked in gambling, while 263,000 were employed in casino hotels. Gambling industry and casino hotel employment fell 6% between 2002 and 2011.⁶⁰ The domestic gaming market consists of several distinct sectors, each with its own business model and technology.

Lotteries

Lotteries, generally defined as games of chance with the winner chosen via the drawing of lots, are the most widespread form of gambling in the United States; they are now run in 43 states and the District of Columbia. Since New Hampshire reinstated the modern lottery in 1964, state offerings have moved from rudimentary games with preprinted tickets and weekly or monthly drawings to instant scratch-off tickets, lotto games (in which players pick their own combination of numbers), and, in a growing number of states, video lottery terminals, commonly referred to as VLTs, that offer casino-type games such as blackjack and poker.⁶¹ Lottery revenues are typically used to finance various state programs and services, with the money often earmarked for worthy purposes such as financing education.

States have banded together to offer lottery games such as Powerball across state lines, working through the Multi-State Lottery Association and the Mega Millions consortium.⁶² (The two lottery groups in 2010 agreed to cross-sell tickets.) Such mega-games allow states to offer jackpots that can be in the millions of dollars, increasing demand. Unlike many other countries, including Ireland, the United Kingdom, and Germany, the United States does not have a national lottery.

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and a Code of Conduct for Gambling, November 2008, p. 7, <http://www.europarl.europa.eu/activities/committees/studies/download.do?file=23191>.

⁵⁹ First Research, *Gambling Overview Industry Profile*, October 1, 2012, p. 1.

⁶⁰ Bureau of Labor Statistics (BLS), Quarterly Census of Employment and Wages, NACIS 7132 and NACIS 72112, accessed October 31, 2012. The North American Industry Classification System (NAICS) places gambling industries into NAICS 7132, which comprises establishments primarily engaged in operating gambling facilities or providing gambling services, including bingo, off-track betting, slot machine parlors, lotteries, bookmakers, and card rooms. Casino hotels are classified in NAICS 72112, which comprises establishments primarily engaged in providing short-term lodging in hotel facilities with a casino on the premises.

⁶¹ According to the North American Association of State and Provincial Lotteries, "Unlike slot machines, video lottery terminals do not dispense money. Rather, a winning player is provided a ticket that is redeemed by the retailer for prizes."

⁶² Multi-State Lottery Association, <http://www.musl.com>; Mega Millions, <http://www.megamillions.com>.

Lottery gross revenues were reported at more than \$25 billion in 2009, based on the most recent available data.⁶³ State lottery revenues rose about 44%, adjusted for inflation, from 1993 to 2010, with much of the growth driven by the increased number of video lottery terminals.⁶⁴ As revenue growth has become less robust, state lottery administrators have experimented with strategies to improve sales and returns, such as online sales. Some states have debated privatizing their lotteries; Illinois was the first state to move in that direction, in the expectation that a private operator might be better able to boost sales while the state would benefit from an up-front payment.⁶⁵ But privatization also raises questions about the lengths to which states should go to encourage gambling.⁶⁶ A few states, including Minnesota, New Hampshire, New York, North Dakota, and Virginia, now offer advance subscription sales over the Internet.⁶⁷ In a three- to four-year pilot program that started in March 2012, the Illinois Lottery is marketing tickets on its website in time for MegaMillions; the state expects to increase sales by up to \$100 million per year with this program.⁶⁸ Maryland is also considering online sales and anticipates additional revenue of \$2.2 billion in fiscal 2013 if the program starts at the beginning of the fiscal year.⁶⁹

Commercial Casinos

According to the American Gaming Association (AGA), in 2011, there were 445 land- or riverboat-based commercial casinos in the United States, along with 47 racinos (gambling venues located at race tracks) and 517 card rooms.⁷⁰ Commercial casinos, owned and managed by private companies without the involvement of Indian tribes, were in operation in 15 states. Racinos were operating in 13 states. AGA reports gross revenues for commercial casino operators of \$35.6 billion in 2011 and a direct employment base of almost 340,000 people (see **Figure 2**).⁷¹

⁶³ U.S. Census Bureau, The 2012 Statistical Abstract, Table 1259, *Gaming Revenue by Industry: 2000 to 2009*.

⁶⁴ Lucy Dadayan and Robert B. Ward, *Back in Black*, Nelson A. Rockefeller Institute of Government, June 23, 2011, p. 10. There are several measures of lottery returns: total sales; profits, which are sales minus payouts and all other expenses; and gross revenues, which are sales minus payouts to players. Government-sponsored lotteries in 43 states, the District of Columbia and Puerto Rico generated about \$58 billion in total sales in fiscal 2010, and about \$17.6 billion in profits, according to the North American Association of State and Provincial Lotteries. Those numbers are up from 2009, when lotteries generated about \$58 billion in sales and \$17.6 billion in profits.

⁶⁵ Illinois Department of Revenue, "Recommendation of a Private Manager for the Illinois State Lottery," September 10, 2010; James Kilsby, "Pennsylvania, Delaware Deal Growth for Shuffle Master," *GamblingCompliance Ltd.*, September 10, 2010.

⁶⁶ Jonathan Walters, "Turning the Lottery Loose," *Governing*, August 31, 2008, <http://www.governing.com/topics/transportation-infrastructure/Turning-the-Lottery-Loose.html>.

⁶⁷ Natalie Cohen and Roy Eappen, *Dream Big: Lotteries and the States*, Wells Fargo Securities, April 4, 2012, p. 1, [http://www.cdfa.net/cdfa/cdfaweb.nsf/0/801FC7E2E1A9D669882579E9004FA41A/\\$file/Dream%20Big_040412.pdf](http://www.cdfa.net/cdfa/cdfaweb.nsf/0/801FC7E2E1A9D669882579E9004FA41A/$file/Dream%20Big_040412.pdf).

⁶⁸ John Byrne, "Feeling Lucky? Log on to lottery, state says," *Chicago Tribune*, March 25, 2012.

⁶⁹ Stephen Martino, *FY 2013 Budget Presentation*, Maryland State Lottery Agency, So Many Ways to Play ... So Many Ways to Win, <http://dbm.maryland.gov/agencies/operbudget/fy2013testimony/e75d00.pdf>.

⁷⁰ American Gaming Association, *2012 State of the States*, p. 4, <http://www.americangaming.org/files/aga/uploads/docs/sos/aga-sos-2011.pdf>. The AGA defines a commercial casino as a private-sector establishment, wherever located, that offers games of chance and is regulated and taxed by the state where it is located. While Indian casinos are included in the AGA count of total casinos, racinos, and card rooms, the \$35.6 billion industry revenue total does not include Indian gaming. Some video lottery terminal receipts are also counted in state lottery revenue totals.

⁷¹ American Gaming Association, *2012 State of the State*, p. 7. AGA casino revenue and employment figures do not include Indian gaming establishments.

Figure 2. U.S. Commercial Casino Revenues
Billions of Dollars



Source: American Gaming Association and state regulatory agencies.

Commercial casinos are regulated by the states, which generally mandate background checks for key employees, specify the level of payouts to players, and require audits and inspections. Many large casino companies, such as Caesars Entertainment, MGM Resorts International, Wynn Resorts, and Las Vegas Sands Corp., are publicly traded on U.S. stock exchanges, which also make them subject to Securities and Exchange Commission financial reporting requirements.

Slot machines now account for 70% of revenue on casino floors, up from about 40% in the 1970s, according to the American Gaming Association. The machines are increasingly sophisticated, using electronic screens that display a variety of games, and offering combined jackpots that can run into the millions of dollars.⁷² Commercial casinos in South Dakota and Iowa earn more than 90% of their revenues from slot machines. In Nevada, where table games are more important than in other states, slot machines accounted for more than 60% of gambling revenues in 2011.⁷³

Las Vegas has the largest number of commercial casinos with 256, but Atlantic City, the Chicago area (including nearby parts of Indiana), Detroit, Connecticut, St. Louis, and Philadelphia each generated \$1 billion or more in casino revenues in 2011 (see **Table 1**). While many casinos, such as riverboat casinos, cater to day visitors, major casinos in Las Vegas, Atlantic City, and other select areas market themselves as vacation destinations, with high-end amenities, convention and meeting facilities, and big-name entertainers. On the Las Vegas strip, gambling revenue accounts for 35%-45% of total revenue of casino hotels, according to an analysis by Standard & Poor's.⁷⁴

⁷² David Stewart, Ropes & Gray, LLP, *Demystifying Slot Machines and Their Impact in the United States*, White Paper for the American Gaming Association, July 2010, p.1, http://www.americangaming.org/Publications/AGA_studies.cfm.

⁷³ American Gaming Association, *2012: State of the States*, p. 32.

⁷⁴ Esther Y. Kwon, *Industry Surveys, Lodging & Gaming*, Standard and Poor's, May 24, 2012, p. 3.

Table I. Top U.S. Casino Markets, by Annual Gross Revenue
Calendar Year 2011

Rank	Casino Market	Gross Revenue
1	Las Vegas Strip, NV	\$6.069 billion
2	Atlantic City, NJ	\$3.318 billion
3	Chicagoland, IL/IN	\$1.934 billion
4	Detroit, MI	\$1.424 billion
5	Connecticut	\$1.346 billion
6	St. Louis, MO/IL	\$1.114 billion
7	Philadelphia, PA	\$1.090 billion
8	Biloxi, MS	\$824.82 million
9	Tunica/Lula, MS	\$817.09 million
10	Boulder Strip, NV	\$778.89 million
11	Kansas City, MO (includes St. Joseph)	\$741.39 million
12	Shreveport, LA	\$732.67 million
13	Lake Charles, LA	\$672.62 million
14	Reno/Sparks, NV	\$663.28 million
15	New Orleans, LA	\$631.16 million
16	Pittsburgh/Meadow Lands, PA	\$626.01 million
17	Lawrenceburg/Rising Sun/Belterra, IN	\$625.37 million
18	Black Hawk, CO	\$618.70 million
19	Yonkers, NY	\$577.07 million
20	Charles Town, WV	\$541.93 million

Source: American Gaming Association and the Innovation Group.

Tribal Gaming

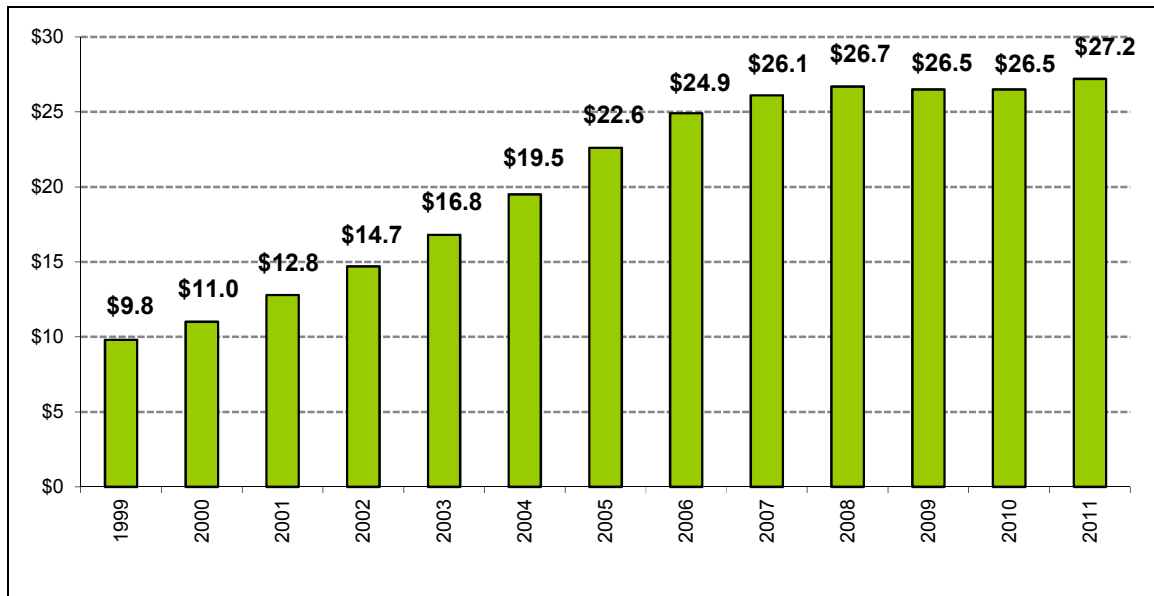
According to the National Indian Gaming Commission, 237 of the 564 federally recognized tribes ran some type of gaming operation in 2011. Indian facilities generated \$27.2 billion in gross gaming revenue (see **Figure 3**).⁷⁵ Tribal operations were affected by the recession. Indian gaming revenues in 2009 and 2010 were down from the \$26.7 billion level of 2008—the first drop since the Indian Gaming Regulatory Act (IGRA) was passed in 1998.⁷⁶ 2011 marked the first increase for the industry since 2008.

⁷⁵ National Indian Gaming Commission, “2011 Indian Gaming Revenues Increased 3%,” Press Release, July 17, 2012, <http://www.nigc.gov/Portals/0/NIGC%20Uploads/readingroom/pressreleases/2011GGRPressRelease07172012.pdf>.

⁷⁶ P.L. 100-497.

Figure 3. Indian Gambling Revenues

Billions of Dollars



Source: National Indian Gaming Commission.

Many of the nearly 460 Indian establishments are rural and relatively small.⁷⁷ But Indian gaming includes major casinos, such as the Mohegan Sun in Uncasville, CT, operated by the Mohegan Tribal Gaming Authority Management Board, and Foxwoods Resort Casino in Ledyard, CT, owned and operated by the Mashantucket Pequot Tribal Nation. Foxwoods is not only the nation's largest tribal casino, but one of the largest casinos in the United States.⁷⁸ Illustrating the differences in scale, the top 20 Indian gaming operations account for 55.5% of tribal gaming revenues.⁷⁹

Indian Gaming Regulatory Act (IGRA)

The 1988 IGRA provides the legal framework for gaming on Indian lands.⁸⁰ Among its purposes was the promotion of tribal economic development, self-sufficiency, and strong tribal governments.⁸¹ Congress passed the law after the Supreme Court held in 1987 that Indian tribes

⁷⁷ KPMG, *Online Gaming: A Gamble or a Sure Bet?* 2010, p. 99.

⁷⁸ Clyde W. Barrow, *New England Casino Gaming: Update 2012*, Center for Policy Analysis, University of Massachusetts Dartmouth, 2012, pp. 4-12, http://www.umassd.edu/media/umassdartmouth/seppce/centerforpolicyanalysis/NEGU_2012.pdf.

⁷⁹ National Indian Gaming Association, "Proceeds of Indian Gaming," Fact Sheet, <http://www.indiangaming.org/info/pr/presskit/PROCEEDS.pdf>.

⁸⁰ CRS Report RL34325, *Indian Gaming Regulatory Act (IGRA): Gaming on Newly Acquired Lands*, by M. Maureen Murphy.

⁸¹ The IGRA's statement of policy states that the legislation is intended to, among other things, promote tribal economic development, self-sufficiency, and strong tribal governments; and provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences.

had considerable authority to conduct gaming operations on their land that did not comply with all state laws and regulations.⁸² IGRA authorizes three classes of gaming:

- Class I social gaming, for prizes of minimal value or in connection with traditional tribal ceremonies, is subject to tribal regulation;
- Class II bingo and card games, excluding baccarat and slots, are subject to joint tribal and federal regulation; and
- Class III casino gaming is subject to both state and tribal control through a tribe-state compact, which must comply with a federal framework.

For a tribe to offer class II and class III gaming on a reservation or land held in trust, the tribe must be “located in a State that permits such gaming for any purpose by any person, organization or entity.”⁸³ Federal courts have interpreted this provision to permit tribes to conduct any type of gaming permitted in the state, but without state limits or conditions. For example, tribes in states that permit “Las Vegas” nights for charitable purposes may seek to negotiate a compact with a state that allows for class III casino gaming. On the other hand, the fact that state law permits some form of lottery is not, in itself, sufficient to permit a tribe-state compact allowing all forms of casino gaming.⁸⁴

There has been controversy regarding so-called “reservation shopping,” in which tribes, often in rural areas, seek to locate casinos on land closer to urban centers in order to attract more customers.⁸⁵ The Secretary of the Interior has authority over tribe-state compacts. The National Indian Gaming Commission oversees class II gaming, tribal gaming ordinances, and some regulatory issues. Its chairman is appointed by the President and confirmed by the Senate. The other two commissioners are appointed by the Secretary of the Interior.

IGRA places limits on the use of tribal revenues from Indian gaming. Among the permissible uses are education, health care, tribal government and other development activities, and per capita distributions to tribal members.⁸⁶ Because Indian tribes are sovereign nations under federal law, they do not pay taxes on income generated by commercial activities. Tribes pay employment taxes, however, and are taxed on wagering.⁸⁷ In negotiating compacts with state governments, some tribes have pledged to share a portion of proceeds from class III gambling with the state. The National Indian Gaming Commission estimated that in 2009, based on the most recent available data, that Indian gaming returned \$2.4 billion to states in the form of taxes, revenue sharing, and other payments including compact revenue agreements.⁸⁸

⁸² *California v. Cabazon Band of Mission Indians*, 480 U.S. 202.

⁸³ CRS Report RL34325, *Indian Gaming Regulatory Act (IGRA): Gaming on Newly Acquired Lands*, by M. Maureen Murphy. The law requires states in such compacts to negotiate in good faith.

⁸⁴ *Ibid.*

⁸⁵ Judy Keen, “Tribes, City At Odds Over Casino,” *USA TODAY*, November 4, 2010, http://www.usatoday.com/news/nation/2010-10-04-reservations04_ST_N.htm.

⁸⁶ National Indian Gaming Commission, “Frequently Asked Questions,” http://www.nigc.gov/About_Us/Frequently_Asked_Questions.aspx.

⁸⁷ Internal Revenue Service, *Gaming Tax Law and Bank Secrecy Act Issues for Indian Tribal Governments*, 2008, <http://www.irs.gov/pub/irs-pdf/p3908.pdf>. Income of certain corporations set up as separate and distinct from a tribe can be taxed.

⁸⁸ National Indian Gaming Association, *The Economic Impact of Indian Gaming*, 2009, p. 8, http://www.indiangaming.org/info/NIGA_2009_Economic_Impact_Report.pdf.

Financing Uncertainty

As is the case with commercial casinos, some tribal operations that expanded in recent years have had difficulty meeting or restructuring debt obligations. The Mashantucket Pequot Nation, which operates the Foxwoods casino,⁸⁹ defaulted in 2009 and is restructuring a debt estimated at \$2 billion.⁹⁰ The Mohegan Tribal Gaming Authority, which refinanced \$1.64 billion in long-term debt in March 2012, announced layoffs involving hundreds of employees at the Mohegan Sun in 2010 and again in 2012.⁹¹ Because tribes are sovereign nations, there are emerging complications for lenders. For example, the Mohegan tribe's constitution gives its Gaming Disputes Court, made up of a trial court and an appeals court, exclusive jurisdiction over disputes involving gaming. The Mohegan Sun *2009 Annual Report* spelled out some of the potential legal issues:

We, the Tribe and our wholly-owned subsidiaries may not be subject to, or permitted to seek protection under, the federal bankruptcy laws since an Indian tribe and we, as an instrumentality of the Tribe, may not be a "person" eligible to be a debtor under the U.S. Bankruptcy Code. Therefore, our creditors may not be able to seek liquidation of our assets or other action under federal bankruptcy laws. Also, the Gaming Disputes Court may lack powers typically associated with a federal bankruptcy court, such as the power to non-consensually alter liabilities, direct the priority of creditors' payments and liquidate certain assets. The Gaming Disputes Court is a court of limited jurisdiction and may not have jurisdiction over all creditors of ours or our subsidiaries or over all of the territory in which we and our subsidiaries carry on business.⁹²

An ongoing dispute between Wells Fargo Bank and Saybrook Investors LLC, and Wisconsin's Lac du Flambeau Band of Lake Superior Chippewa Indians could affect gaming financing. Wells Fargo has sued the tribe over its failure to make monthly payments on a \$50 million tribal bond to consolidate debt and invest in a riverboat casino operation in Mississippi. The U.S. District Court for the Western District of Wisconsin in 2010 found that the bond deal was invalid because it had not been reviewed by the National Indian Gaming Commission, as the court said was required under IGRA.⁹³ Wells Fargo has appealed.⁹⁴ After a remand in September 2011 from the Seventh Circuit Court of Appeals, court action continues regarding the validity of the bond documents other than the bond indenture.⁹⁵

⁸⁹ Michael Sokolove, "Foxwoods is Fighting for its Life," *New York Times*, March 14, 2012.

⁹⁰ Brian Hallenbeck, "Debt Deal Lifts Veil on Foxwoods' Finances," *theday.com*, October 14, 2012.

⁹¹ Brian Hallenbeck, "Mohegan Sun Laying Off More than 300 Workers; CEO Replaced," *Hartford Courant*, September 27, 2012.

⁹² Mohegan Sun, *2009 Annual Report*, p. 37.

⁹³ *Wells Fargo Bank N.A. vs. Lake of the Torches Economic Development Corporation*, United States District Court, Western District of Wisconsin, Case No. 09-CV-768, January 5, 2010.

⁹⁴ Alexandra Berzon, "Tribal-Casino Loans are Tested by Ruling," *Wall Street Journal*, May 12, 2010.

⁹⁵ Dennis J. Whittlesey, "Seventh Circuit to Lac Du Flambeau: 'They Can't Touch You'," *Gaminglegalnews*, September 8, 2011, <http://www.jdsupra.com/legalnews/gaming-legal-news-september-8-2011-v-44607/>.

Pari-Mutuel Betting

Now legal in 43 states,⁹⁶ pari-mutuel betting is defined as “player-banked betting with all the bets pooled and prizes awarded from the pool.”⁹⁷ The most common examples in the United States are dog and horse racing and jai alai (a game played on a court with a ball and wicker racket).

In recent years, the industry has developed an extensive system of Internet and off-track wagering. In 2000, Congress approved legislation to amend the definition of “interstate off-track wager” in the Interstate Horseracing Act (15 U.S.C. 3001-3007). Proponents claim the amendment permits tracks to accept bets online from individuals located in states where pari-mutuel betting is legal (although not necessarily where either off-track or online betting is legal); the Department of Justice disagrees.⁹⁸ Legislation introduced in the 112th Congress, H.R. 2702, would clarify that the Wire Act and other laws do not apply to the Interstate Horseracing Act.

Despite the legal uncertainty, interstate pari-mutuel betting with remote devices is growing through the use of Advance Deposit Wagering. Fans can also go to off-track betting parlors to watch a simulcast of a race and place bets. States have also attempted to revive racetracks that have been losing patronage by turning them into racinos with video lottery terminals, slot machines, and other gambling. The Oregon Racing Commission, which licenses and audits many of the nation’s largest ADWs, reports that online wagering via its licensed companies rose to \$1.7 billion in 2011, from \$883 million in 2004.⁹⁹

Sports Betting

Congress in 1992 passed the Professional and Amateur Sports Protection Act (PASPA; P.L. 102-559) with strong support from the National Basketball Association, National Football League (NFL), and National Collegiate Athletic Association, among others. The law generally barred state governments from licensing, sponsoring, or engaging in sports gambling. It contained select exceptions for Nevada, Oregon, Delaware, and Montana, each of which allowed certain types of sports betting at the time of passage. Currently, Nevada is the only state to permit wagers on a full complement of sporting events and leagues.¹⁰⁰ According to the Nevada Gaming Control Board, casino-goers in Nevada wagered more than \$2.8 billion on sporting events in 2011, a rise from \$2.4 billion in 2006.¹⁰¹

⁹⁶ Seven states do not currently offer legal pari-mutuel wagers: Alaska, Georgia, Hawaii, Mississippi, North Carolina, South Carolina, and Utah.

⁹⁷ William N. Thompson, *Gambling in America: An Encyclopedia of History, Issues and Society*, 2001, ABC-CLIO, Santa Barbara, p. 289.

⁹⁸ CRS Report 97-619, *Internet Gambling: An Overview of Federal Criminal Law*, by Charles Doyle. The language was amended to read: “‘interstate off-track wager’ means a legal wager placed or accepted in one State with respect to the outcome of a horserace taking place in another State and includes pari-mutuel wagers, where lawful in each State involved, placed or transmitted by an individual in one State via telephone or other electronic media and accepted by an off-track betting system in the same or another State, as well as the combination of any pari-mutuel wagering pools.” 15 U.S.C. 3002(3); sec. 629, P.L. 106-553, 114 Stat. 2762-108 (2000).

⁹⁹ Oregon Racing Commission. Hub Information, Advanced Deposit Wagering Hub Handles, http://www.oregon.gov/Racing/pages/hub_index.aspx.

¹⁰⁰ CRS Report 97-619, *Internet Gambling: An Overview of Federal Criminal Law*, by Charles Doyle.

¹⁰¹ American Gaming Association, *2012 State of the States*, The AGA Survey of Casino Entertainment, 2012, p. 33.

Delaware, which allowed only limited multi-game or parlay betting¹⁰² on NFL contests at the time the 1992 law was passed, enacted a law in 2009 to create a state sports lottery. The NFL and other sports leagues challenged the law, and the U.S. Third Circuit Court of Appeals in Philadelphia ruled that the state was limited to offering narrow betting, similar to what existed in 1992. The U.S. Supreme Court in May 2010 declined to hear an appeal, effectively ending Delaware's effort to expand sports betting.¹⁰³ After its voters authorized sports betting at casinos and racetracks in 2011, New Jersey has mounted the latest court challenge to the constitutionality of PASPA.¹⁰⁴

Remote Competition

If Congress acts to encourage the expansion of remote gaming, there are likely to be significant effects on brick-and-mortar casinos and racetracks. Some may benefit; others may not benefit, or may be harmed. In Nevada, for example, some Las Vegas-based casino operators are actively preparing remote gaming options, while in nearby Reno and Lake Tahoe, officials at some of the smaller casinos worry that legalizing online poker could pull dollars away from their casinos.

Casinos that primarily serve day trippers with slot machines may face the greatest challenges. As Standard & Poor's wrote in a recent analysis of the U.S. gambling industry,

Standard & Poor's thinks some players will migrate all their gambling to online venues, but we also believe that casino properties that are able to offer a differentiated experience or other options, such as theater shows, spas, restaurants, and shopping, will continue to appeal to certain customers. We believe that Internet sites would find it difficult to offer experiences of camaraderie and indulgence that some physical properties can provide, although we think younger players could more easily adapt to Internet gaming. However, we believe companies will need to become more proactive in deciding how to differentiate their product/property, whether that means developing an online presence or providing a better value or experience at their properties. As the music industry has already found out, adapting to and successfully incorporating new technology could be critical to casino industry profits.¹⁰⁵

Federal remote gaming legislation could benefit some sectors of the gaming industry more than others, depending on how it is crafted. State lottery officials, for example, have expressed concern that proposals that would give existing gambling establishments preference for online poker licenses could give those businesses an advantage in the market. By the same token, commercial casinos are worried that under the existing legal framework, online state lottery promotions, such as keno-type games, could encroach on their turf. A report for the state of New Hampshire noted concerns about market saturation and the possibility that the federal government could legalize online gaming, which could have an impact on the competitiveness of the state market. The report

¹⁰² A parlay bet is a wager that links two or more bets. The bettor wins only if all the linked wagers fall his or her way. The potential payout is higher, but the odds of winning are longer.

¹⁰³ Office of the Commissioner of Baseball v. Markell, 579 F.3d 293 (3d. Cir. 2009); Warren Richey, "Supreme Court turns back Delaware bid to expand sports betting," *Christian Science Monitor*, May 3, 2010, <http://www.csmonitor.com/USA/Justice/2010/0503/Supreme-Court-turns-back-Delaware-bid-to-expand-sports-betting>.

¹⁰⁴ Raven Clabough, "New Jersey, Christie, Fight to Allow Sports Gambling," *New American*, August 15, 2012, <http://www.thenewamerican.com/usnews/constitution/item/12483-new-jersey-christie-fight-to-allow-sports-gambling>.

¹⁰⁵ Esther Y. Kwon, *Lodging & Gaming*, Standard & Poor's Industry Survey, May 24, 2012, p. 8.

said it was difficult to quantify the potential impact of federal regulation and liberalization of Internet gambling.¹⁰⁶

Interest groups are at odds over remote gambling. The American Gaming Association and Caesars Entertainment, a large casino operator, have urged Congress to adopt federal legislation to regulate Internet gambling to avoid a patchwork of state regulations and different tax rates. Aligned against them are others such as the National Conference of State Legislatures (NCSL), which wants individual states to have the right to legalize, license, and tax remote gaming.¹⁰⁷ Many Indian tribes have declared their opposition to any federal gaming regime because of its broad waiver of sovereign immunity, although some of the larger tribes are now beginning to reverse their previous position, viewing online gambling as a possible business opportunity.¹⁰⁸

Even if it leads to the growth of gambling revenues and employment at the national level, federal remote gaming legislation has the potential to cause revenue and employment declines in certain locations. These effects may well depend upon the details of whatever legislation Congress passes and the specific actions taken by individual states in response.

Problem Gambling

As states have expanded legal gambling, a number have also created programs—funded through tax revenues or assessments on private companies—for treatment of individuals who are considered problem or pathological gamblers.¹⁰⁹ The National Council on Problem Gambling estimates, based on previous research, that about 1% of the population can be classified as pathological gamblers and another 3% as problem gamblers.¹¹⁰ Adolescents and males are considered to be at higher risk of a gambling disorder.¹¹¹

According to a survey by the Association of Problem Gambling Service Administrators, more than 30 states offer some type of publicly funded gambling addiction service, though only about 15 states fund employees who work full-time on the issue.¹¹² Spending ranges from a high of

¹⁰⁶ New Hampshire Gaming Study Commission, *Final Report of Findings*, May 18, 2010, p. 18.

¹⁰⁷ An August 2012 NCSL resolution on Internet gaming stated “Congress should consider the perspective of the states as it examines this issue and asks that it involves state legislators in any federal efforts that seek to reform the regulation of online gaming.” NCSL Resolution, State Sovereignty in Online Gaming, http://www.ncsl.org/documents/telecommunications/Online_Gaming_Resolution_.pdf.

¹⁰⁸ Rob Hotakainen, “More Tribes, including Tulalip, Now Support Legal Online Gambling,” *The News Tribune*, August 4, 2012.

¹⁰⁹ According to the National Council on Problem Gambling, problem gambling is characterized by an increasing preoccupation with gambling, a need to bet more money more frequently, restlessness or irritability when attempting to stop, “chasing” losses, and loss of control manifested by continuation of the gambling behavior in spite of mounting, serious, negative consequences. The American Psychiatric Association defines pathological gambling as: “Persistent and recurrent maladaptive gambling behavior” that meets at least five of 10 criteria.

¹¹⁰ National Council on Problem Gambling, citing H. Shaffer, M. Hall, and J. Vander Bilt, “Estimating the prevalence of disordered gambling behavior in the United States and Canada: a research synthesis,” *American Journal of Public Health*, 1999, 89:1369-1376.

¹¹¹ National Council on Problem Gambling, “Advancing Health Through System Reform-Problem Gambling,” May 22, 2009.

¹¹² Jeff Marotta, Thomas Moore, Tim Christensen, *2010 Survey of State Agencies Providing Problem Gambling Services*, Association of Problem Gambling Service Administrators, http://www.problemgamblingservices.org/CMS_uploads/APGSA%202010%20Survey%20Summary.pdf.

about \$1.60 per capita in Oregon to less than 5 cents per capita in Maryland. A recent study prepared for the state of Connecticut noted that Connecticut's Problem Gambling Services division had a more than six-fold increase in its caseload from 2001 to 2008.¹¹³

The National Council on Problem Gambling endorsed legislation before the 112th Congress, H.R. 2334, the Comprehensive Problem Gambling Act of 2011, which would include problem and pathological gambling in federal mental health programs and to initiate research on problem gambling. Opponents of legislation to expand remote gaming cite the potential for an increase in problem gambling if the ease of online gambling encourages even more people to gamble.¹¹⁴ The first-ever legislation to address problem gambling was introduced in the 111th Congress as H.R. 2906. The House Financial Services Committee recommended passage of the bill, but dissenting members expressed concern about the consequences of increased gambling activity:

[y]oung people are particularly at risk. John Kindt, Professor of Business Administration at the University of Illinois says: "It's 'click the mouse, lose your house.' It puts gambling at every work desk and every school desk and in every living room. It would increase problem gambling rates exponentially." By approving this bill, the largest expansion of gambling in history, the Committee has taken steps to open casinos in every home, dorm room, library, iPod, Blackberry, iPad and computer in America.¹¹⁵

Because Internet gambling has developed only recently, the scientific literature on its effects on problem gambling is meager. Iowa's Department of Public Health recently studied the potential health issues related to legalizing Internet poker in Iowa. Among other findings, the study said "the literature cannot support a claim that Internet poker will cause people to become problem or pathological gamblers; however, researchers have asserted that Internet gambling has the potential to contribute to problem gambling."¹¹⁶

Gambling as a Government Revenue Source

Revenues from lotteries, taxes on commercial casinos and other gambling represented an average of 2.4% of own-source general revenue raised by state governments in FY2010.¹¹⁷ State gambling revenues rose from \$15 billion in 1998 to \$24 billion in 2010; a significant part of the increase was because more casinos, racinos, and lottery products came into the market (see **Figure 4**). Legislative policy changes were another important factor, driving more than 35% of growth in gambling revenue over the period, reports the Rockefeller Institute.¹¹⁸

¹¹³ National Council on Problem Gambling, <http://www.ncpgambling.org/i4a/pages/index.cfm?pageid=1>.

¹¹⁴ June Cotte and Kathryn A. Latour, "Blackjack in the Kitchen: Understanding Online Versus Casino Gambling," *Journal of Consumer Research*, 2008, <http://ejcr.org/preprints/2009/february/cotte-preprint-feb09.pdf>.

¹¹⁵ H.Rept. 111-656, Part 1, p. 56, <http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt656/pdf/CRPT-111hrpt656-pt1.pdf>.

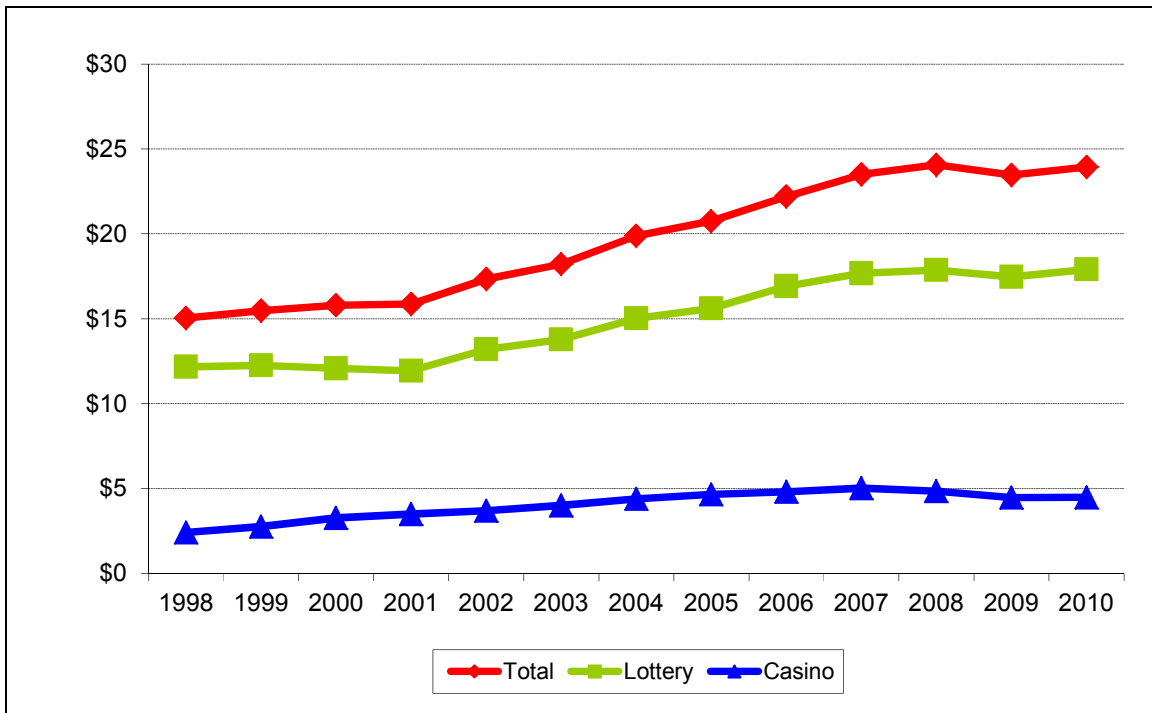
¹¹⁶ Melvin G. Gonnerman and Gene M. Lutz, *Internet Poker: A Public Health Perspective*, Iowa Department of Public Health, September 2011, p. 30.

¹¹⁷ 2010 calculation based on general revenue data from the Census Bureau's State Government Finances and total VLT revenues from the Rockefeller Institute.

¹¹⁸ Lucy Dadayan and Robert Ward, *Back in the Black: States' Gambling Revenues Rose in 2010*, Rockefeller Institute of Government, June 23, 2011, pp. 3, http://www.rockinst.org/pdf/government_finance/2011-06-23-Back_in_the_Black.pdf.

Figure 4. Trends in State Gambling Revenue, FY1998-FY2010

Billions of Dollars



Source: Nelson A. Rockefeller Institute of Government.

Notes: Total also includes pari-mutuel betting and racinos. Totals based on state fiscal years. 2010 data are the most recent available at the time this report was prepared.

Although minor on a national scale, gambling taxes are extremely important for certain states. In Nevada, gaming taxes made up about 24% of the state's general fund revenue in 2011, compared to 28% from the sales tax.¹¹⁹ In Delaware, gambling revenue accounts for more than 7% of the state's general fund budget, which makes it the fourth largest source of revenue, ahead of corporate income and gross receipts taxes.¹²⁰ In Rhode Island, casino revenue represents the third largest source of income, contributing more than 10% of the state's general revenue.¹²¹ Connecticut's gaming industry represented the state's fifth-largest revenue source in 2010.¹²² Even though Las Vegas is the nation's number one gambling venue, more commercial casino tax revenue was collected by Pennsylvania (\$1.5 billion) than Nevada (\$865 million).¹²³ In part, the difference is explained by tax rates. Pennsylvania taxes at a rate of 55% of gross slot machine

¹¹⁹ Anne Knowles, "Online Sales Increasingly Cutting into Tax Dollars, Says Retailers' Group," *Nevada News Bureau*, September 1, 2011.

¹²⁰ Michael Cooper, "States Up the Ante in Bid to Lure Other States' Bettors," *New York Times*, August 2, 2012.

¹²¹ University of Massachusetts, Dartmouth, *New England Gaming Research Project*, <http://www.umassd.edu/seppce/centers/cfpa/newenglandgamingresearchproject/>.

¹²² Pamela M. Prah, "Casinos, Online Poker Get State Attention," *Stateline, the Pew Charitable Trusts*, December 9, 2011.

¹²³ American Gaming Association, *2012 State of the States*, p. 6.

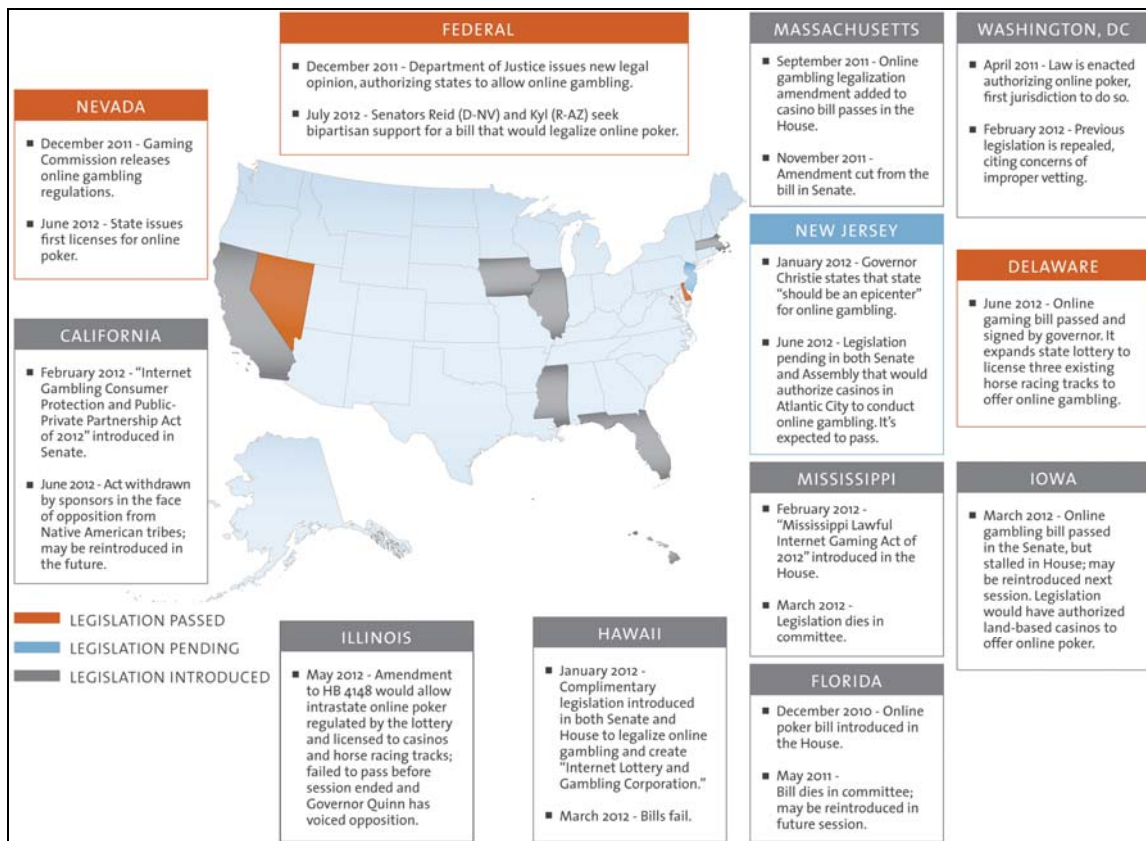
revenue and 16% of table games revenues, whereas Nevada’s rate tops out at 6.75% on gross gaming revenue, with additional county fees and levies.¹²⁴

Nationwide, gaming revenues have recovered from the recession that began in December 2007 and ended in June 2009. However, the expansion of gambling is not leading to increased revenue for all state governments. The creation of new lottery games and construction of casinos in new locations may be leading to market saturation, especially in the Northeast, where casino revenue in New Jersey fell 7% in 2011 due mainly to expanded gaming opportunities in nearby states.¹²⁵

Following DOJ’s recent opinion on the Wire Act, several states have reconsidered Internet gaming. However, several proposed state measures have failed to pass (see **Figure 5**).

Figure 5. State-Level Online Gambling Legislation

July 2012



Source: Perkins Coie. Reproduced with permission.

¹²⁴ Ibid, p. 18-21.

¹²⁵ Lucy Dadayan and Robert Ward, *Back in the Black*, The Nelson A. Rockefeller Institute of Government, June 23, 2011, http://www.rockinst.org/pdf/government_finance/2011-06-23-Back_in_the_Black.pdf.

Among recent developments at the state level:

- Nevada became the first state to develop a regulatory framework for online poker and to award statewide online gaming licenses.¹²⁶ In June 2012, Nevada's gaming commission issued its first licenses for online poker to International Game Technology and Bally Technologies.¹²⁷ Boyd Gaming, Fertitta Interactive, and Golden Nugget have also received licenses. By federal law, the online poker games approved in Nevada can only be played within Nevada's borders. Before any online system can go live, the licensees must "prove their systems are capable of identifying players by location and that players are of legal age."¹²⁸
- Delaware became the second state to authorize online casino-style gambling. The Gaming Competitiveness Act of 2012 allows the state's three casinos and the Delaware Lottery to offer online versions of slot machines and table games including blackjack and poker, under the control and monitoring of state lottery officials.¹²⁹ The Delaware Department of Finance has estimated the law will generate \$7.75 million in revenues for the state in fiscal 2013. Delaware has yet to announce a timetable for the start of online gambling.
- California has debated legislation to create a framework to authorize intrastate Internet gambling for several years. Native American tribes currently have the exclusive right to offer video gaming in California, and their opposition led to withdrawal of the proposed Internet Gambling Protection and Public-Private Partnership Act of 2012. Separately, there is a push to legalize online poker.
- The New Jersey Assembly in 2010 approved a bill to allow Internet gaming within the state, based out of Atlantic City casinos, but it was vetoed by Governor Chris Christie amid concerns it violated the state constitution.¹³⁰ In June 2012, a state assembly committee approved a bill to allow Atlantic City casinos to offer Internet poker under certain circumstances; the legislation is still pending. One consulting firm, Econsult, has estimated online gambling in New Jersey would

¹²⁶ From the *Nevada Legislative Counsel's Digest*:

Existing law authorizes certain gaming establishments to obtain a license to operate interactive gaming. (NRS 463.750) This bill requires the Nevada Gaming Commission to establish by regulation certain provisions authorizing the licensing and operation of interactive gaming under certain circumstances. This bill further provides that a license to operate interstate interactive gaming does not become effective until: (1) the passage of federal legislation authorizing interactive gaming; or (2) the United States Department of Justice notifies the Commission or the State Gaming Control Board that interactive gaming is permissible under federal law.

Available at http://www.leg.state.nv.us/Session/76th2011/Bills/AB/AB258_EN.pdf.

¹²⁷ Nevada Gaming Commission Meeting, Agendas and Dispositions, June 21, 2012, p. 10 and p. 16. <http://gaming.nv.gov/modules/showdocument.aspx?documentid=5383>.

¹²⁸ Richard N. Velotta, "Nevada Issues First Licenses for Online Poker Within State," *Las Vegas Sun*, June 2012.

¹²⁹ The Delaware Gambling Competitiveness Act of 2012 was signed on June 28, 2012. [http://legis.delaware.gov/LIS/lis146.nsf/vwLegislation/HB+333/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis146.nsf/vwLegislation/HB+333/$file/legis.html?open).

¹³⁰ Office of Gov. Chris Christie, "Governor Christie Vetoes Internet Gaming Bill as Inconsistent with the Goals of Revitalizing Atlantic City's Tourism and Gaming Industries," March 3, 2011, <http://www.state.nj.us/governor/news/news/552011/approved/20110303b.html>. New Jersey has also been active on other gambling issues. In 2012, the Governor signed a bill that would allow betting on sports at New Jersey's casinos and racetracks.

see annual gross revenues of more than \$200 million, raise as much as \$55 million annually in taxes, and possibly create up to 1,900 new jobs.¹³¹

- On May 26, 2011, Iowa Governor Terry Branstad signed Senate File 526, which directed the Iowa Racing and Gaming Commission to conduct a study of regulating Internet poker. That report, submitted to the Iowa General Assembly in December 2011, concluded that legalizing online poker might net the state \$3 million to \$13 million a year.¹³²
- The District of Columbia authorized online gambling in 2011 when it passed the Lottery Modernization Act, which authorized online games over the Internet, but the DC City Council voted to repeal the law in 2012, leaving the future of online gaming in the District of Columbia uncertain.¹³³

Congressional Action on Internet Gaming

As states move forward on a piecemeal basis, Congress has considered legislation to legalize and regulate interstate Internet gambling nationwide. The House Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade on October 24, 2011, held a hearing on the pros and cons of Internet gaming.¹³⁴ The Senate Committee on Indian Affairs in July 2011 held a roundtable discussion with tribal leaders, seeking input on how expanded Internet gaming could help or hurt Indian gambling operations.¹³⁵ The committee also held a hearing on July 26, 2012, to discuss Internet gaming and how it might affect Indian tribes.¹³⁶

The congressional Joint Committee on Taxation estimated that licensing fees from the Internet Gambling Regulation, Consumer Protection, and Enforcement Act, introduced as H.R. 2267 in the 111th Congress, would have led to a net federal revenue increase of \$283 million over a 10-year period.¹³⁷ That legislation would have authorized the Secretary of the Treasury to establish a system to license and regulate Internet wagering, subject to additional oversight and licensing investigations performed by recognized state gaming authorities, with operators paying fees to meet the cost of reviewing license applications and administering the act. The Joint Committee on

¹³¹ Econsult Corporation, *Potential Economic and Fiscal Impact of the Proposed New Jersey Intrastate i-Gaming Bill*, December 2010, p. 2, http://www.econsult.com/articles/IMEGA_Summary_120710.pdf.

¹³² Iowa Racing and Gaming Commission, *Report on the Possible Regulation of Intrastate Internet Poker in the State of Iowa*, December 1, 2011, p. 94, <http://www.iowa.gov/irgc/Intrastate%20Internet%20Poker.pdf>.

¹³³ The Lottery Act would have authorized the D.C. Lottery and Charitable Games Control Board to offer both games of skill and games of chance via the Internet. In February 2012, the Finance and Revenue Subcommittee of the District of Columbia City Council voted to repeal the measure and reverted to its prior definition of legal lottery games, thereby excluding online gaming.

¹³⁴ House Energy and Commerce Committee Subcommittee on Commerce, Manufacturing, and Trade, "Internet Gaming: Is There a Safe Bet?," <http://energycommerce.house.gov/hearings/hearingdetail.aspx?NewsID=9027>.

¹³⁵ Senate Committee on Indian Affairs, "Roundtable on the Future of Internet Gaming: What's at Stake for Tribes?," July 26, 2011, <http://www.indian.senate.gov/hearings/hearing.cfm?hearingID=3d9031b47812de2592c3baeba61b2f52>.

¹³⁶ United States Senate Committee on Indian Affairs, *Oversight Hearing on Regulation of Tribal Gaming: From Brick & Mortar to the Internet*, July 26, 2012, <http://www.indian.senate.gov/hearings/hearing.cfm?hearingID=b7d10740c81221f121fde25595bfdc8b>.

¹³⁷ Congressional Budget Office Cost Estimate, *H.R. 2267, Internet Gambling Regulation, Consumer Protection, and Enforcement Act*, September 22, 2010, <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/118xx/doc11883/hr2267.pdf>.

Taxation also estimated that the federal government would collect an additional \$42 billion over 10 years under H.R. 2230, the Internet Gambling Regulation and Tax Enforcement Act of 2011. That legislation would have imposed a license fee for online gambling operations equal to 2% of all funds deposited by customers into special accounts that could be used for online wagering, and would have given states and tribes the option of accepting from licensees, on a monthly basis, an online gambling fee “equal to 6 percent of all deposited funds deposited by customers residing in each State or area subject to the jurisdiction of an Indian tribal government.”¹³⁸ The \$42 billion revenue gains were based on the assumption that no states opted out of the system.¹³⁹ Revenue estimates were much lower under other scenarios, suggesting that the impact of increased remote gaming on state receipts will depend heavily upon the specifics of any federal legislation.

Senate Majority Leader Harry Reid and Senator Jon Kyl have proposed the Internet Gambling Prohibition, Poker Consumer Protection and Strengthening UIGEA Act of 2012. The draft legislation would give some existing establishments preference for online gambling licenses for poker, off-track horse race wagering, and certain state lottery sales for the first two years after enactment. States would have to choose to be covered by the licensing provisions.¹⁴⁰ The bill would prohibit other forms of online gaming and strengthen enforcement. Poker sites would pay 16% tax rates, of which 14% would go to individual states or Indian tribes, and 2% would go to the federal government. Of the states’ portion, 70% would go to the state where the player resides, while 30% will go to the regulatory state based on where the player resides. Separately, state governments would be authorized to launch online lottery sales at their discretion. The act would create an Office of Online Poker Oversight within the U.S. Department of Commerce to monitor the licensing and enforcement of online gambling.¹⁴¹ The proposed legislation also makes any business that served U.S. customers in violation of the UIGEA after December 31, 2006, ineligible for a license for five years after the bill is adopted.

Another measure introduced in the 112th Congress is H.R. 2366, by Representative Joe Barton, to legalize and regulate Internet interstate online poker while restricting some other forms of Internet gaming. Under the Barton bill, online poker sites would be licensed by a state or tribal gambling oversight commission approved by a new Office of Internet Poker Oversight in the Department of Commerce. Registered sites would be subject to regulation and inspection to, among other things, prevent minors from playing, prevent money laundering, and identify problem gamblers. States would have the ability to limit activities. Certain established gambling businesses would initially have preference for licenses.

Also in the 112th Congress, Representative John Campbell introduced H.R. 1174, establishing a federal regulatory and enforcement framework covering many forms of Internet gambling but prohibiting sports betting. The bill would allow Indian tribes and states to opt out of the law if they wished to ban such gaming within their territory. The Secretary of the Treasury would hold the ultimate authority to grant licenses to operate Internet gaming facilities. Other pending

¹³⁸ CRS Report RS22749, *Unlawful Internet Gambling Enforcement Act (UIGEA) and Its Implementing Regulations*, by Brian T. Yeh and Charles Doyle.

¹³⁹ Joint Committee on Taxation, letter to Rep. Jim McDermott, October 23, 2009, <http://www.safeandsecureig.org/sites/default/files/InternetGamblingScore.pdf>.

¹⁴⁰ States wishing to offer online poker and off-track betting would opt-in via an election requiring legislative approval. Doing nothing would see a state opt-out. A tribe can only opt-in if the state in which it resides also opts in.

¹⁴¹ Marcus Webb, “U.S. Internet Poker Bill Stalled by Infighting; Delaware Okays Online Casinos,” *Vending Times*, Vol. 52, No. 10, October 2012.

legislation includes H.R. 2702, by Representative Christopher Gibson, to clarify the status of pari-mutuel betting on horse racing, and H.R. 2230, by Representative Jim McDermott, to license and tax Internet gaming, including requiring tax withholding on winnings and extending excise taxes to Internet gaming bets. Senator Daniel Akaka has released a discussion draft of a Tribal online gaming bill that includes rules to permit federally recognized tribes to apply for licenses to operate online gaming and to establish a new Office of Tribal Online Gaming within the Department of Commerce to provide oversight and regulation of Indian gambling operations.¹⁴²

Interests which have been at odds in the past over Internet gaming have lobbied for the Joint Select Committee on Deficit Reduction¹⁴³ to include provisions in any broad budget deficit reduction proposal to legalize and tax Internet poker. The Poker Players Alliance, for example, has urged its members to push for legalization of Internet poker. A group called Fair Play USA, which includes state law enforcement officers and gambling industry representatives, is also supporting legislation on online for-profit poker. There has been some pushback from the states. For example, Maryland Governor Martin O'Malley, in an October 2011 letter to leaders of the Joint Select Committee on Deficit Reduction, said efforts to federalize poker and casino gambling threaten the \$500 million in receipts his state generates annually from its lottery, as well as other gambling revenues.¹⁴⁴ More recently, the National Governors Association called on lawmakers to include state input before moving on any online-gaming legislation.¹⁴⁵

Indian gaming officials have expressed concerns about attaching Internet gaming legislation to any deficit reduction bill. The American Indian Gaming Association has a set of conditions it wants to see met in any bill to legalize interstate Internet gambling.¹⁴⁶ The tribes, as sovereign nations, want to ensure that their Internet gambling revenues are not taxed, that qualified tribal operations are allowed to participate in the online market from the outset, and that existing state-tribal compacts are not undermined. The American Indian Gaming Association has been concerned that some proposals could give commercial casinos and other established businesses early entry into the market, possibly putting tribal operations at a disadvantage.

¹⁴² Senate Committee on Indian Affairs Examines Tribal Gaming Regulation, July 27, 2012, <http://www.indian.senate.gov/news/pressreleases/2012-07-27.cfm>.

¹⁴³ CRS Report R42013, *The Budget Control Act of 2011: How Do the Discretionary Caps and Automatic Spending Cuts Affect the Budget and the Economy?*, by Marc Labonte and Mindy R. Levit.

¹⁴⁴ Letter from Gov. Martin O'Malley, <http://thehill.com/images/stories/blogs/flooraction/Jan2011/omalley.pdf>.

¹⁴⁵ Letter from National Governors Association to Senator Harry Reid, Majority Leader U.S. Senate, October 25, 2012, <http://www.nga.org/cms/home/federal-relations/nga-letters/economic-development—commerce-c/col2-content/main-content-list/october-25-2012-letter—internet.html>.

¹⁴⁶ National Indian Gaming Association, National Indian Gaming Association Resolution on Legislation to Legalize Internet Gaming, October, 20, 2010, http://www.indiangaming.org/info/alerts/NIGA_Internet_Gaming_Resolution_2010.pdf.

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